

**WEST VIRGINIA  
SECRETARY OF STATE  
NATALIE E. TENNANT  
ADMINISTRATIVE LAW DIVISION**

Form #3

Do Not Mark In This Box

FILED

2012 AUG 10 PM 1:52

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE  
AND  
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: Higher Education Policy Commission TITLE NUMBER: 133

CITE AUTHORITY: WV Code §18B-4-7

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: Series 52

TITLE OF RULE BEING PROPOSED: Annual Reauthorization of Degree-Granting Institutions

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

  
\_\_\_\_\_  
Authorized Signature

FILED

TITLE 133  
LEGISLATIVE RULE 2012 AUG 10 PM 1:52  
WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION

SERIES 52  
ANNUAL REAUTHORIZATION OF DEGREE-GRANTING INSTITUTIONS  
OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**§133-52-1. General.**

- 1.1. Scope. This rule establishes the policy regarding annual reauthorization of degree-granting institutions which offer degrees above the associate level.
- 1.2. Authority. West Virginia Code §18B-4-7
- 1.3. Filing Date.
- 1.4. Effective Date.

**§133-52-2. Purpose.**

- 2.1. The West Virginia Higher Education Policy Commission (Commission), through a process of granting authorization and annual reauthorization of baccalaureate and graduate level higher education institutions operating in West Virginia, has the responsibility of protecting consumers and ensuring students are offered quality education by postsecondary providers to West Virginia residents. An institution authorized by the Commission shall be required to operate in accordance with fair consumer practices to ensure that students can make appropriate decisions concerning their investment of time and money.
- 2.2. Fair consumer practices means honesty, fairness, and disclosure to students in the areas of recruitment, admission, contractual agreements, student financial assistance, obligations to repay student loans, placement assistance and job placement rates, advertising, refund policies, the meaning and recognition of different types of accreditation, the transferability of the institution's credits to other postsecondary institutions, the offering of quality instructional programs, and other appropriate performance measures.
- 2.3. The Commission is responsible for the authorization of any institution, association or organization external to or within the state which desires to offer programs or credit-bearing academic courses of higher learning in West Virginia. Authorization is required for all postsecondary providers including: non-profit private institutions, proprietary institutions, out-of-state public institutions, degree-granting entities that offer degrees at the baccalaureate level or above, and entities that use the term "academy,"

“college,” “institution,” “university” or similar title, hereafter referred to as “institution.”

- 2.4. The Commission is responsible for the annual reauthorization of any private, proprietary, or out-of-state postsecondary institution that has physical presence in West Virginia and offers degree programs above the associate level. The process of conferring reauthorization by the Commission includes the monitoring of standards for degrees awarded, the collection and dissemination of pertinent institutional data, the conduct of certain reviews and audits, and the imposition of certain sanctions including revocation of degree-granting authority.
- 2.5. Existing institutions of higher education authorized to operate in West Virginia prior to the effective date of this rule are subject to the reauthorization provisions of this rule and shall report annually to the Commission on all items related to reauthorization prescribed in this rule.
- 2.6. While the provisions of this rule apply directly to the annual reauthorization of any private institution in West Virginia which offers degrees above the associate level, the criteria for annual reauthorization also apply to public higher education institutions that offer degrees above the associate level in the state, and are under the purview of the Commission with the exception of Marshall University and West Virginia University.
- 2.7. While exempt from annual reauthorization, Marshall University and West Virginia University shall provide information delineated in Section 5.4 to the Commission by November 1 of each year.
- 2.8. The Commission shall make available information on institutional performance of all public institutions located in West Virginia, including Marshall University and West Virginia University, on the Commission’s website and through other appropriate venues.
- 2.9. Institutions that are exempt from the provisions of Series 20, *Initial Authorization of Degree-Granting Institutions*, for initial state authorization shall be exempt from the provisions of this rule.

**§133-52-3. Definitions.**

- 3.1. “Accreditation” means a status attained by the institution through voluntarily meeting standards set by a nongovernmental entity recognized by the U.S. Secretary of Education.
- 3.2. “Authorization” means the status attained by the institution that allows the institution to offer programs and courses within the State of West Virginia.

This status is granted by the Higher Education Policy Commission when the institution demonstrates compliance with the requirements for such status.

- 3.3. "Commission" means the West Virginia Higher Education Policy Commission.
- 3.4. "Council" means the West Virginia Council for Community and Technical College Education.
- 3.5. "Degree" means any earned award conferred by a higher education institution which represents satisfactory completion of the requirements of a program, or course of study, or any instruction beyond or apart from the secondary level of greater duration than eleven months of full-time study.
- 3.6. "Distance education" means the delivery of any course or degree programs by synchronous or asynchronous technology. Asynchronous or synchronous technology via distance delivery includes all forms of internet, electronic, digital, online, video, and any other technology driven delivery system.
- 3.7. "Institution" means any person, firm, corporation, association, agency, institute, trust or other entity of any nature whatsoever offering education beyond the secondary level which:
  - 3.7.a. offers courses or programs of study or instruction which lead to or which may reasonably be understood to be applicable toward a baccalaureate, masters, doctorate, or other specialized certification/degree designation above the baccalaureate level; or
  - 3.7.b. operates a facility as a college or university or other entity in the State of West Virginia which offers degrees or other indicia of a level of educational attainment beyond the secondary school level; or
  - 3.7.c. uses the term "college" or "university," or words of like meaning, in its name or in any manner in connection with its academic affairs or business.
- 3.8. "Physical presence" means an actual presence in the state, online or on-site, for the purpose of conducting activity related to: a postsecondary educational institution; educational service; dissemination of educational credentials; enrollment, solicitation or advertising. Physical presence as further outlined for purposes of authorization shall include but not be limited to:

- 3.8.a. An instructional site within the state.
- 3.8.b. Dissemination of an educational credential from a location within the state.
- 3.8.c. An agent, whether compensated or not, who is utilized for the purpose of administering, coordinating, teaching, training, tutoring, counseling, advising, recruiting, or any other activity on behalf of the sponsoring institution.
- 3.8.d. Advertising, promotional material or public solicitation in any form that targets West Virginia residents through distribution or advertising in the state.
- 3.8.e. Instructional delivery that receives assistance from any other organization within the state in that delivery.
- 3.8.f. Clinical experiences, internships, or other similar curricular requirement.

Activities exempt from this definition include: online instructors residing in West Virginia but having no direct, in-person contact with students and individuals participating in college fairs coordinated by the Commission and local school districts.

- 3.9. “Reauthorization” is the process by which an institution annually renews its status as an institution authorized to offer programs and courses for West Virginia residents. This status is granted by the Commission when the institution demonstrates compliance with the requirements for such status.
- 3.10. “Religious, theological, or faith-based institution” means a postsecondary institution that offers no degree programs other than those specifically related to the institution’s doctrine. Institutions that offer general degree programs cannot be exempted by this rule as religious, theological, or faith-based.
- 3.11. “Unearned tuition” means the anticipated amount of tuition revenue minus refunds that will be generated within a one-year time frame of the institution’s authorized operation in West Virginia. “Unearned tuition” for the application of annual reauthorization is the amount of tuition revenue minus refunds that was received during the previous year.

#### **§133-52-4. Exemptions.**

- 4.1. Institutions that clearly qualify as exemptions under the provisions of

Series 20, *Initial Authorization of Degree-Granting Institutions*, and after Commission staff review, shall be considered exempt from reauthorization. Institutional exemption is subject to annual review and/or revocation any time the activity deviates from the original determination factors for exemption. An institution which claims to be exempt under the provisions of this section must submit such information as may be required by the Commission to determine whether the institution is exempt from reauthorization.

- 4.2. Any institution fully authorized to operate in West Virginia prior to the effective date of this rule is subject to the provisions of this rule pertaining to reauthorization.
- 4.3. The following institutions shall be exempt from the provisions of this rule:
  - 4.3.a. Correspondence, business, occupational and trade schools which:
    - 4.3.a.1. offer nothing higher than a specialized associate degree; and
    - 4.3.a.2. are regulated under West Virginia Code provisions §18B-2B-9 on correspondence, business, occupational and trade schools.
  - 4.3.b. Out-of-state institutions:
    - 4.3.b.1. offering courses through brokering or other collaborative arrangements with a West Virginia public institution of higher education and which support programmatic offerings of the state institution;
    - 4.3.b.2. offering a short course or seminar in which the instruction for the segment takes no more than twenty classroom hours, and is not for college credit;
    - 4.3.b.3. offering courses or programs on a military installation solely for military personnel or civilians employed on such installation;
    - 4.3.b.4. offering courses or programs at a location in West Virginia by the authority of the Commission for a designated period of time; or
    - 4.3.b.5. offering online courses or programs with Commission approval for a specified period of time.

- 4.3.c. Non-Degree granting institutions whose programs are designed primarily for job entry or upgrading of skills and are described in clock (contact) hours. These programs typically prepare individuals for employment and do not require courses beyond those specific to the job or its field with program length sufficient to effect outcomes.
- 4.3.d. A religious, theological, or faith-based institution which meets the criteria for exemption outlined in Series 20, *Initial Authorization of Degree-Granting Institutions*, and offers no degree programs other than those specifically related to the institution's doctrine.

**§133-52-5. Annual Reauthorization.**

- 5.1. All authorized institutions, except those previously exempted in section 4.3 of this rule, must annually submit a reauthorization application report in a format prescribed by Commission staff. The annual reauthorization year will be from July 1 through June 30, with the 2012-2013 year being the initial reporting year. The annual application is due each November 1 and must be accompanied by an annual fee as provided in section 9 of this rule.
- 5.2. Reauthorization applications postmarked after November 1 or other due date will be assessed a late renewal fee as prescribed in section 9 of this rule.
- 5.3. Upon request by the Commission, authorized institutions must provide documentation necessary to assess the performance of the institution.
- 5.4. The reauthorization application must include the following:
  - 5.4.a. Name and address of the institution of higher education.
  - 5.4.b. Chief executive officer's name, title, address, phone number, fax number, and email address.
  - 5.4.c. Institutional liaison's name, title, address, phone number, fax number, and email address.
  - 5.4.d. Verification of current accreditation status and copy of latest annual HLC/NCA Institutional Update Report.
  - 5.4.e. Full and part-time student enrollments of resident and non-resident students for each term during the most recent reporting year.

- 5.4.f. A current schedule of fees and charges for tuition.
- 5.4.g. First to second year retention rates for first-time, full-time certificate and degree-seeking students for the most recent year.
- 5.4.h. Graduation rates for undergraduate degree-seeking first-time, full-time freshmen for the most recent graduating six-year cohort year.
- 5.4.i. Data on student transfers in to and out of the institution for the most recent year.
- 5.4.j. Licensure pass rates for completion of all professional programs, e.g., education, nursing, and engineering for the most recent year.
- 5.4.k. Student loan cohort default rates for the most recent year available.
- 5.4.l. Campus crime statistics for the most recent reporting year available.
- 5.4.m. Number of student, staff, and faculty grievances filed during the most recent reporting year.
- 5.5. The Commission shall provide definitions of requested data elements. When appropriate, prior data submissions may be utilized to fulfill specific data requirements. Guidance will be provided by Commission staff.
- 5.6. Upon receipt of the annual reauthorization application, Commission staff shall convene a compliance review committee to review the submitted documentation. The compliance review committee shall be composed of:
  - 5.6.a. Persons who are qualified by academic training or professional experience to verify the institution's compliance with Commission standards for authorization.
  - 5.6.b. Persons who are representative of both public and private institutions.
  - 5.6.c. Members of the Commission staff. The Vice Chancellor for Academic Affairs or designee shall serve as chair of the committee.
- 5.7. Upon review of documentation and recommendation of the compliance review committee, institutions that are found to be in compliance with generally accepted parameters of operation are recommended to the Commission for reauthorization.

- 5.8. If the compliance review committee finds, after review of required documentation, that the institution is not in compliance with generally accepted parameters of operation, the committee may request additional documentation for review.
- 5.9. Each institution shall provide, at the request of the compliance review committee, all information the committee considers necessary to assess the performance of the institution and determine whether the institution continues to meet the minimum standards for conferring degrees. Information may include but is not limited to the following:
  - 5.9.a. Institutional information.
    - 5.9.a.1. Copies of articles of incorporation, charter, constitution, and by-laws for the initial reporting year, and changes only for reporting in subsequent years.
    - 5.9.a.2. Copy of any articulation agreement the institution has with a West Virginia higher education institution entered into or changed within the last year.
    - 5.9.a.3. Copy of the institution's current mission and goals statement for the initial reporting year, and changes only for reporting in subsequent years.
    - 5.9.a.4. Copy of the current institutional catalog.
    - 5.9.a.5. Copies of current promotional and recruitment materials and advertisements provided or distributed to West Virginia residents.
  - 5.9.b. Accreditation information.
    - 5.9.b.1. If the institution is accredited by a regional accrediting agency, verification of the accreditation status, including any correspondence within the last year.
    - 5.9.b.2. If the institution is accredited by a national accrediting agency or any of its academic programs is accredited by a program accrediting agency, verification of the accreditation status.
  - 5.9.c. Program information.
    - 5.9.c.1. A list of current degree programs offered in West

Virginia by the institution.

5.9.c.2. Results of any external degree program evaluation during the last year, if any.

5.9.c.3. A list of any degree programs that have ceased to be offered during the previous year.

5.9.c.4. Identification of methods used to assess student achievement.

5.9.c.5. Results of the most recent assessment of student achievement.

5.9.d. Faculty information.

5.9.d.1. A list of current full-time and part-time faculty with highest degree held, degree field(s), and institution conferring highest degree.

5.9.e. Financial information.

5.9.e.1. The latest financial statement for the most recent fiscal year compiled or audited by an independent certified public accountant, including any management letters provided by the independent auditor.

5.9.f. Facilities information, if applicable.

5.9.f.1. Verification of compliance with all applicable local, state, and federal safety and fire codes.

5.9.g. Student information.

5.9.g.1. The institution's policies about student admissions, evaluation, suspension, and dismissal for the initial reporting year, and changes only for reporting in subsequent years.

5.9.g.2. A current schedule of fees, charges for tuition, required supplies, student activities, and all other student charges.

5.9.g.3. The institution's policy about tuition and fee refunds and adjustments for the initial reporting year, and changes only for reporting in subsequent years.

- 5.9.g.4. The institution's policy about granting credit for experiential learning, including prior education, training, and experience for the initial reporting year, and changes only for reporting in subsequent years.
- 5.9.g.5. The institution's policy on post-graduation placement, if any, and data on placements for the most recent year.
- 5.9.g.6. A list of all student grievances for the most recent year as well as the nature and disposition of each.
- 5.9.h. Other information.
  - 5.9.h.1. Information related to compliance with federal or state laws and regulations that require reporting to the public, students, employees or federal or state agencies.
  - 5.9.h.2. Information on how the institution ensures accuracy in its usual publications such as the catalog and institutional brochures and fair representation by recruiters and agents.
- 5.9.i. The Commission shall provide definitions of requested data elements. When appropriate, prior data submissions may be utilized to fulfill specific data requirements. Guidance will be provided by Commission staff.
- 5.10. On-site review.
  - 5.10.a. The compliance review committee, at its discretion, may conduct on-site reviews to assess institutional compliance with the minimum standards for conferring degrees as outlined in Series 20, *Initial Authorization for Degree-Granting Institutions*. The committee may evaluate maintenance of adequate academic and performance standards, conduct financial audits, or require the institution to perform such audits and provide detailed data to the committee. The visit will be scheduled at a time which is mutually convenient to the institution and the committee. The institution shall pay the reasonable expenses associated with the compliance review visit.
  - 5.10.b. Following review of submitted documentation and/or site visit, the compliance review committee will prepare an analysis of the findings.

- 5.10.c. A draft of a staff report prepared in accordance with this section will be provided to the institution for correction of factual errors and comment. The institution may provide the Commission a response to the report within ten (10) working days of receipt of the report. The institutional comments will be included with the compliance review committee report presented to the Commission.
- 5.10.d. The compliance review committee will develop a recommendation for the Commission regarding the institutional reauthorization application. Only those institutions which meet generally accepted higher education state standards of quality will be recommended for reauthorization.
- 5.10.e. An institution which is not found to meet the generally accepted higher education state standards of quality will be recommended to the Commission for denial of reauthorization. Once reauthorization is denied, the institution is subject to the authorization requirements, process and review in Series 20, *Initial Authorization of Degree-Granting Institutions*, in order to seek authorization to operate within West Virginia.
- 5.10.f. An institution submitting an annual reauthorization report adjudged by the Commission as meeting the standards for reauthorization shall retain its authorized status for the current year.

**§133-52-6. Public Institutions and Annual Reauthorization.**

- 6.1. All public institutions, except Marshall University and West Virginia University, under the purview of the Commission shall apply for annual reauthorization and shall meet the conditions for reauthorization as provided in section 5 of this rule.
- 6.2. The Commission shall make available to the public information on matters of institutional performance for all public institutions under its purview, including Marshall University and West Virginia University, as provided in section 2 of this rule.

**§133-52-7. Dissemination of Institutional Information.**

- 7.1. The Commission shall make available to the public, information on matters of institutional performance that are not confidential and not restricted by federal or state laws or regulations. Such information may be posted on the Commission's website or disseminated through other appropriate venues.

- 7.2. The Commission office shall maintain a list of institutions authorized to grant degrees and shall make such list available to the public.

**§133-52-8. Change of Ownership and Control.**

- 8.1. Authorization of an institution terminates at the time when a change in ownership resulting in a change of control of the institution changes from that indicated on the institution's most recent reauthorization application unless the institution files an application within ten (10) business days after the change of ownership that resulted in a change of control. Such institution shall submit an application reflecting the change in ownership and control and a fee of \$500.
  - 8.1.a. If an institution files an application requesting approval of a change of ownership and control more than ten (10) business days after the change of ownership resulting in a change of control takes effect, the authorization terminates and such an application will be considered as an application for authorization and the institution shall pay the fees specified in Series 20, *Initial Authorization for Degree-Granting Institutions*.
  - 8.1.b. An authorized institution shall notify the Commission of any anticipated change in ownership that results in a change of control at least thirty (30) days prior to the change in ownership and control.

**§133-52-9. Reauthorization Fees.**

- 9.1. A non-refundable fee of \$500 shall accompany the submission of the annual application report for reauthorization.
- 9.2. Failure to file the annual report or to pay the report fee shall be sufficient grounds for denial of reauthorization, suspension, or revocation of degree granting authority. An institution filing a report that is postmarked after the November 1 due date will be assessed a late fee of \$300.
- 9.3. The annual fee and annual report requirements shall be applicable for all years of authorization through the Commission. The Commission may adjust all fee charges as deemed necessary.
- 9.4. Public institutions located in West Virginia are exempt from the requirement of payment of reauthorization fees as provided in this section.

**§133-52-10. Sanctions and Termination of State Authorization.**

- 10.1. Intermediate sanctions.

10.1.a. If an institution fails to comply with the provisions for reauthorization in this rule, the Commission may progressively impose one or more of the following sanctions.

10.1.a.1. Require the submission and implementation of an improvement plan to address or correct problems identified by the Commission.

10.1.a.2. Suspend the ability of an institution to enroll students for one or more of the approved programs offered by the institution.

10.2. Termination of state authorization.

10.2.a. An institution shall provide the Commission with a copy of any notice of warning, suspension, revocation or other adverse action received from any national or regional accrediting agency within five (5) business days of receipt of such notice.

10.2.b. The Commission may for good cause, suspend, withdraw or revoke the authorization of an institution to generate or solicit students within the state, place an institution on probation, order refunds to students, forfeit the institution's surety bonds, revoke an institution's degree granting authority, or take any other appropriate action per Series 20, *Initial Authorization of Degree-Granting Institutions*.

10.2.c. The Commission may terminate state authorization if the institution fails to submit an acceptable annual reauthorization application or an incomplete or unsatisfactory reauthorization application, as determined by Commission staff and referenced in Section 5 of this rule.

10.2.d. The Commission shall revoke the authority of an institution to confer degrees at any time when the institution's governing body, chief executive officer, or both have done any one or more of the following:

10.2.d.1. Failed to maintain the minimum standards for conferring degrees.

10.2.d.2. Refused or willingly failed to provide information to the Commission in a manner and within a reasonable timeframe as established by the Commission.

10.2.d.3. Willfully provided false, misleading or incomplete information to the Commission.

10.2.e. An institution authorized as a religious, theological or faith-based college that fails to continue to meet the criteria for a religious institution shall have its authorization terminated. The institution shall be so notified in writing. A phase-out period of not more than one additional academic term shall be permitted. An appeal to the Commission may be filed within ten (10) business days. In the absence of a timely appeal, the termination shall be final.

10.3. Notification to Cease Offering Degrees or Degree Credits

Institutions that are not authorized but offer degrees and/or degree credits in West Virginia shall be notified by certified mail that they shall cease immediately to offer degrees and/or degree credits. The Commission shall initiate appropriate legal action if institutions fail to comply.

**§133-52-11. Notification and Deposit of Records Upon Discontinuance of Operations.**

11.1. If an authorized institution, branch campus, or extension program of an authorized institution discontinues operation in this state, its chief executive officer shall notify the Commission of the date of discontinuance and the name and address of the agency where records will be maintained.

11.2. Records shall be permanently maintained and copies may be obtained by authorized parties. Such records shall include but not be limited to information pertaining to the admission of each student and former student and the educational record of each student and former student. Financial aid records of each student and former student shall be retained consistent with state and federal regulations.

11.3. When an institution decides to cease postsecondary education operations, it must assist students to find alternative means to complete their studies with a minimum of disruption, and inform the Commission of the following:

11.3.a. the planned date of termination of postsecondary education operations;

11.3.b. the planned date for the transfer of student records;

11.3.c. confirmation of the name and address of the organization to receive and hold the student records; and

11.3.d. the official at the organization receiving the student records who is designated to provide official copies of records or transcripts upon request.

**§133-52-12. Notification: Appeals:**

- 12.1. Once the Commission has received and verified the accuracy of information constituting any of the grounds identified in section 10 of this rule, the Commission shall notify the institution and its owner in writing of its intent to recommend denial or suspension of reauthorization or other adverse action and the grounds for such recommendation.
  - 12.1.a. The owner of the institution may, within ten (10) business days of receipt of such notice, request a hearing upon the recommended action. Such hearing, if requested, shall be commenced within twenty (20) business days of such request at the Chancellor's office or at such other location convenient to the parties and witnesses as may be designated by the Chancellor.
  - 12.1.b. The hearing shall be conducted by the Chancellor or his/her designee, pursuant to the procedures set forth in Chapter 29A, Article 5 of the Code of West Virginia.
  - 12.1.c. The Chancellor or his/her designee may continue the hearing at the request of the institution for good cause shown. Continuance shall not be granted as a matter of right.
  - 12.1.d. If the owner or a representative of the institution does not request a hearing within the requisite time period, the recommendation of the Chancellor or his/her designee shall be deemed unchallenged by the institution and reported to the Commission for final action.
- 12.2. During the hearing, the grounds for denial, suspension, withdrawal, or revocation of authorization to operate the institution or other adverse action must be established by clear and convincing evidence.
- 12.3. Irrelevant, immaterial, or unduly repetitious evidence may be excluded from the hearing. Formal rules of evidence as applied in civil cases in the circuit courts of this state shall not be applied. When necessary to ascertain facts not reasonably susceptible of proof under those formal rules evidence not admissible there under may be admitted, except where precluded by statute, if it is a type commonly relied upon by reasonably prudent persons in the conduct of their affairs.

- 12.4. The rules of privilege recognized by the law of this state shall be followed.
- 12.5. Objections to evidentiary offers shall be noted in the record. Any party to the hearing may vouch the record as to any excluded testimony or other evidence.
- 12.6. Any party to a hearing may appear with witnesses to testify on his or her behalf; may be heard in person, by counsel or both; may present such other evidence in support of his or her position as deemed appropriate by the Chancellor or his/her designee; and, may cross-examine witnesses called by the Commission in support of the charges.
- 12.7. The hearing shall be open to the general public.
- 12.8. A record of the hearing, including the complaint(s), if applicable, the notice of hearing, all pleadings, motions, rulings, stipulations, exhibits, documentary evidence, evidentiary depositions and the stenographic report of the hearing, shall be made and a transcript thereof maintained in the Commission's files. All recorded materials shall be transcribed. The Commission shall have the responsibility to make arrangements for the transcription and provision of the reported testimony and evidence to the parties. Upon request, a copy of the transcript shall be furnished to any party at his or her expense.
- 12.9. Documentary evidence may be received in the form of copies or excerpts or by incorporation by reference.
- 12.10. The Commission may call witnesses to testify in support of charges and may present such other evidence to support its position; and, may cross-examine witnesses called by the charged party in support of its position.
- 12.11. All parties shall have the right to offer opening and closing arguments.
- 12.12. Hearings may be continued or adjourned to a later date or different place by the Chancellor or his/her designee by appropriate notice to all parties.
- 12.13. All motions related to a case set for hearing, except motions for continuance and those made during the hearing, shall be in writing and shall be received in the office of the Chancellor at least ten (10) business days before the hearing. Pre-hearing motions shall be heard at a pre-hearing conference or at the hearing prior to the commencement of testimony.
- 12.14. Any party may submit proposed findings of fact and conclusions of law at a time and manner designated by the Chancellor or his/her designee.

- 12.15. At any time prior to the hearing or thereafter, the Chancellor or his/her designee may hold conferences for the following purposes:
  - 12.15.a. To dispose of procedural requests, pre-hearing motions or similar matters;
  - 12.15.b. To simplify or settle issues by consent of the parties; or,
  - 12.15.c. To provide for the informal disposition of cases by stipulation or agreement.
- 12.16. The Chancellor or his/her designee may cause such conferences to be held on its own motion or by the request of a party.
- 12.17. Evidentiary depositions may be taken and read or otherwise included into evidence as in civil actions in the circuit courts of this state.
- 12.18. Subpoenas to compel the attendance of witnesses and subpoenas duces tecum to compel the production of documents may be issued by the Chancellor pursuant to West Virginia Code §29A-5-1(b).
- 12.19. Written requests by a party for the issuance of subpoenas duces tecum as provided in section 12.18 of this rule must be received by the Commission no later than ten (10) business days before a scheduled hearing. Any party requesting the issuance of subpoenas duces tecum shall see that they are properly served in accordance with West Virginia Code §29A-5-1(b).
- 12.20. Any final order entered by the Commission following a hearing conducted pursuant to these rules shall be made pursuant to the provisions of West Virginia Code §29A-5-3. Such orders shall be entered within sixty (60) days following the submission of all documents and materials necessary for the proper disposition of the case, including transcripts, and shall contain findings of fact and conclusions of law unless good cause exists to extend such time or by agreement of the parties.
- 12.21. Findings of fact and conclusions of law shall be recommended to the Commission by the Chancellor or his/her designee and must be approved by a majority of the Commission by vote at a regular meeting, before a final order is entered. A copy of the final order approved by a majority of the Commission shall be served upon the institution and/or his or her attorney of record, if any, within ten (10) business days after entry by the Commission by personal service or by registered or certified mail.
- 12.22. The final order may suspend, withdraw or revoke the authorization of the institution; place an institution on probation; order refunds to students; order forfeiture of the institution's surety bond and disbursement of the

funds forfeited disbursed to students injured by the institution's violation of this rule or its enabling statute; or order any other action deemed appropriate by the Commission, up to and including payment of loans, interest and other charges in connection with institution loans caused a student by the institution's violation of this rule.

- 12.23. All proceedings pursuant to this rule shall be conducted pursuant to and comply with applicable statute, including, but not limited to, West Virginia Code §29A-5-1, et seq.
- 12.24. Any relief a student believes he or she was not rightfully awarded by the Commission pursuant to this rule may be pursued in any other appropriate forum.

**West Virginia Higher Education Policy Commission  
Meeting of August 10, 2012**

**ITEM:** Final Approval of Series 52, Annual Reauthorization of Degree-Granting Institutions

**INSTITUTIONS:** All

**RECOMMENDED RESOLUTION:** *Resolved*, That the West Virginia Higher Education Policy Commission approves Series 52, Annual Reauthorization of Degree-Granting Institutions, for final filing with the Secretary of State.

*Further Resolved*, That staff is instructed to forward the legislative rule to the Legislative Oversight Commission on Education Accountability for approval and further legislative action.

**STAFF MEMBER:** Kathy Butler

**BACKGROUND:**

Senate Bill 375, passed during the 2011 legislative session, delegates the responsibility and authority to the Commission for establishing, monitoring, and maintaining quality standards of education at all institutions, both public and private within West Virginia, with the exception of Marshall University and West Virginia University. The governing boards of Marshall University and West Virginia University are responsible for determining minimum standards for conferring degrees at their respective institutions.

At the May 18, 2012 Commission meeting, the proposed legislative rule, Series 52, Annual Reauthorization of Degree-Granting Institutions, was approved for filing with the Secretary of State for a thirty-day public comment period. Staff received comments from four sources including a private trade school, the West Virginia Independent Colleges and Universities, a public institution, and one individual. Summaries of the comments and staff responses are included on the following pages. It is recommended that the minor changes be made and the final rule be approved.

Comment: The word “specialized” in front of “associate degree” in Section 4.3.a.1 unnecessarily introduces confusion. The lines between different types of associate degrees tend to be blurry, but the difference between obtaining an associate degree and a bachelor degree is quite clear. They suggested dropping the word “specialized.”

Response: The use of the term “specialized” associate degree is consistent with the language of West Virginia Code §18B-2B-9 and West Virginia Council for Community and Technical College Education, Series 35, Correspondence, Business, Occupational, and Trade Schools. No change made.

Comment: Section 4.3.a.2. creates the requirement that institutions “typically do not pursue regional accreditation...” This introduces unnecessary confusion; therefore, this requirement should be dropped altogether.

Response: All these issues are defined in West Virginia Code §18B-2B-9 and West Virginia Council for Community and Technical College Education, Series 35, Correspondence, Business, Occupational, and Trade Schools, which states that “[Correspondence, business, occupational, and trade schools which] are regulated under West Virginia Code §18B-2B-9 on correspondence, business, occupational, and trade schools.” Consequently, Section 4.3.a.2. has been deleted and replaced by the current Section 4.3.a.3. Change made.

Comment: The definitions of a “degree” contained in Section 3.5 and the definition of “institution” contained in Section 3.7 are overly broad and could take in a postsecondary institution not offering a degree. A similar problem exists with the language in Section 2.3.

Response: The definition of degree is the definition used by the Integrated Postsecondary Education Data System that is used nationwide to gather data from postsecondary education providers with the exception of the words “of greater duration than eleven months of full-time study.” These words were added to make a distinction between degrees and degree programs and certificate programs of less than one year. No change made.

The term “institution” was purposefully used throughout the policy and intended to be broad. The term itself does not imply regulation; however, it is used to identify sources of post-secondary education. Institutions that are exempt from specific requirements are noted throughout the document. No change made.

Comment: Section 8 requires certain procedures whenever “...ownership or control of an institution changes...” The U.S. Department of Education requires certain procedures to be followed when a change of ownership resulting in a change of control occurs. The fact that a change of ownership not resulting in a change of control would not impact the institution is recognized by USDOE in their regulations. The suggestion is that the section be rewritten to use the language paralleling U.S. DOE language which is that the required procedures must be instituted only in the case of the change of ownership “resulting in a change of control.”

Response: Section 8.1 will be revised to read: “Authorization of an institution terminates at the time when a change in ownership results in a change of control of the institution from that indicated on the institution’s most recent authorization

application unless the institution files an application within ten (10) business days after the change of ownership that resulted in a change in control. Such institution shall submit an application reflecting the change in ownership and control and a fee of \$500.” Change made.

Likewise the language in Sections 8.1.a. and 8.1.b. will be changed from “change in ownership or control” to “change in ownership and control” to be consistent with the previous section. Change made.

Comment: Sections 10 and 12 establish the procedures for appeal. The comment stated that the procedures identified under these sections create unrealistic timelines. Section 12.1 requires that upon the receipt of a notice to deny or suspend state authorization, the institution must request a hearing within ten (10) days. If the hearing is requested, it begins within twenty (20) days. It was stated that this requirement should be dropped completely in favor of an automatic right to appeal unless the institution decides to accept the recommendation after having adequate time to review the report. A minimum of thirty (30) business days to initiate an appeal was suggested.

Response: Because of the severity of such an action and the impact that such an action may have upon enrolled students, this process should not be prolonged. Institutions impacted by such an action will have ample time prior to such action to recognize the need and/or appropriateness for appeal. It is imperative that decisions that have the potential to directly impact students and the quality education they receive should not be delayed. No change made.

Comment: Sections 10 and 12 establish the procedures for appeal, stating that the hearing must be commenced within twenty (20) days. The comment stated that this “creates an unrealistic time frame. In the event of such extreme action as a loss of authorization (which would result in closing the institution) it is highly likely that there are substantial, complex issues. It is simply unrealistic to expect an institution to thoroughly investigate the issues, obtain counsel, and prepare its defense in twenty (20) days.”

Response: Because of the severity of such an action and the impact that such an action may have upon enrolled students, this process should not be prolonged. Institutions impacted by such an action will have ample time prior to such action to recognize the need and/or appropriateness for appeal. It is imperative that decisions that have the potential to directly impact students and the quality education they receive should not be delayed. No change made.

Comment: According to the comment received, the timeframes established in Section 12.1 are unrealistic. “Section 12.13 requires motions to be made ten (10) days before the hearing. In essence, this means that the institution would have had to obtain counsel and review the entire case, which is probably a complex matter, all within ten (10) days, since the hearing is within twenty (20) days. This is obviously an unrealistic time frame.” Another issue raised was that “Section 12.19 requires that subpoenas be issued at least ten (10) days before the hearing.” The author felt that this, too, was an

unrealistic timeframe.

Response: Because of the severity of such an action and the impact that such an action may have upon enrolled students, this process should not be prolonged. Institutions impacted by such an action will have ample time prior to such action to recognize the need and/or appropriateness for appeal. It is imperative that decisions that have the potential to directly impact students and the quality education they receive should not be delayed. No change made.

Comment: “Section 12.1.b states that the chancellor and/or his/her designee shall conduct the hearing. There should an independent, outside, third-party to hear the case, such as an administrative law judge. To have the chancellor’s office investigate a school and then have the chancellor or his/her designee hear the evidence is the equivalent of a prosecuting attorney’s office investigating a criminal case and then the prosecutor or the prosecutor’s designee hearing the case.”

Response: West Virginia Code §29A-5-1 provides the guidelines for “the agency, any member of the body comprises the agency, or any hearing examiner or other person permitted by statute to hold such a hearing to hold any such hearing for such agency, and duly authorized by such agency to do so...” No change made.

Comment: We are puzzled by how the student consumer’s interest is enhanced by exempting West Virginia University and Marshall University from the application of these rules. We suggest that if the exercise of reauthorization enhances the protection of some student consumers in some institutions, it would enhance the protection of all student consumers if extended to all institutions of higher learning in the state.

Response: Senate Bill No. 375, passed March 12, 2011, effective from passage, states that “The commission shall make rules for the accreditation of colleges and universities in this state except the governing boards of Marshall University and West Virginia University shall make rules for their respective institutions...” The rules and standards are required to be published in the same manner as this action. No change made.

Comment: We encourage the Commission to focus on the makeup and operation of the review committee. We would strongly urge this portion of the rule be revised so that the review committee includes representatives from the private sector as well. This will add to the perspectives of the review committee and help to assure the private colleges and universities that (a) the review process will recognize the differences between public and private institutions of higher learning and (b) representatives from the public sector will not have full control over the practices, policies, and reauthorization of private institutions.”

Response: Though the intent is that the compliance review will be comprised of qualified individuals, regardless of their institutional affiliation, a Section 5.6.b.

has been added to assure representation from both private and public institutions. Section 5.6.b states: "Persons who are representative of both public and private institutions." The previous Section 5.6.b has been moved to Section 5.6.c. Change made.

Comment: Section 9.4 that states that public institutions are exempt from the annual reauthorization fees. Does this also include an exemption from paying late fees?

Response: Since public institutions are exempt from the annual reauthorization fee, they are also exempt from the late fee. No change made.

## **SUMMARY OF CHANGES**

Section 4.3.a.2. has been deleted and replaced by the current Section 4.3.a.3. The requirement identified in the original Section 4.3.a.2. is encompassed within the content of West Virginia Code §18B-2B-9, as noted in the next section of the policy.

Section 8.1. will be revised to reflect required procedures that must be instituted in the case of “the change of ownership resulting in a change of control” of an institution.

Section 5.6.b. has been added to assure representation on the compliance review team from both private and public institutions. The previous Section 5.6.b has been moved to Section 5.6.c.

**Ashley Schumaker**

---

**From:** Baker, Cheryl [cbaker@osteo.wvsom.edu]  
**Sent:** Friday, April 13, 2012 9:45 AM  
**To:** Ashley Schumaker  
**Subject:** Comments on Draft 'Series 52'

Ashley,

President Adelman asked that I forward his comments regarding 'Series 52'. They are:

- (1) 5.4.d – WVSOM's accrediting body is the Commission on Osteopathic College Accreditation (COCA).
- (2) General comment – Many of the items listed in this series would not apply to WVSOM. We would appreciate some clarification regarding expectations for our situation.

If you have any questions, please contact me.

Thank you.

*Cheryl Baker*

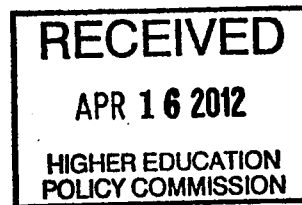
Executive Administrative Assistant  
Office of the President  
WVSOM  
304-647-6201  
[cbaker@osteo.wvsom.edu](mailto:cbaker@osteo.wvsom.edu)



# West Virginia

## Independent Colleges & Universities

West Virginia Independent Colleges & Universities, Inc.  
900 Lee Street Suite 910 Charleston, West Virginia 25301  
tel (304) 345-5525 fax (304) 345-5526 www.wvicu.org



April 13, 2012  
*Via Electronic Mail*  
[schumaker@hepc.wvnet.edu](mailto:schumaker@hepc.wvnet.edu)



Ashley Schumaker  
Senior Director of Board and Public Relations  
West Virginia Higher Education Policy Commission  
1018 Kanawha Boulevard East, Suite 700  
Charleston, WV 25301



RE: Proposed Series 20, Reauthorization of Degree Granting Institutions, and  
Proposed Series 52, Annual Reauthorization of Degree Granting Institutions

Dear Ms. Schumaker:

Thank you for the opportunity to review, and comment upon, the proposed Series 20 and Series 52 rules of the West Virginia Higher Education Policy Commission (HEPC), which relate to the authorization and reauthorization of degree granting institutions. The private colleges and universities that comprise the West Virginia Independent Colleges and Universities have studied both series carefully and have earlier provided extensive comment on the original draft of Series 20. As you are aware, the private colleges and universities had significant concerns about a number of elements of the original draft of Series 20. To HEPC's great credit, those concerns were, to a large extent, effectively addressed by the revision of Series 20 and the origination of Series 52. We really appreciate HEPC's responsiveness to those concerns.

The proposed rules are greatly improved by separating the initial authorization process from the annual reauthorization process. The authorization process must be a vigorous one, while the reauthorization process need not be as extensive. The revised drafts of the two rules have significantly improved the process by focusing on the authorization process and reducing the burdens associated with reauthorization. We applaud these changes.

We also appreciate and share HEPC's concerns about the protection of student consumers in West Virginia, which both rules address. We agree that there are problems in the higher education marketplace that require HEPC's oversight and supervision and that Senate Bill 375 as passed in the regular session of the 2011 legislature, together with the proposed rules, are appropriate measures to address those problems.

Our concerns regarding the current drafts of Series 20 and 52 have been significantly mitigated by the recent revisions to the draft of Series 20 and the promulgation of Series 52. Some concerns, however, remain.

Davis Elkins  
COLLEGE



We are puzzled by how the student consumer's interest is enhanced by exempting West Virginia University and Marshall University from the application of these rules. An explanation does not appear within the four corners of Series 20, and logic and public policy fail to fill that gap. We suggest that if the exercise of reauthorization enhances the protection of some student consumers in some institutions, it would enhance the protection of all student consumers if extended to all institutions of higher learning in the state.

We **encourage** the Commission to focus on the makeup and operation of the review committee. As currently drafted, the rule anticipates a review committee made up of representatives of public institutions. We think this is shortsighted. We would strongly urge this portion of the rule be revised so that the review committee includes representatives from the **private sector** as well. This will add to the perspectives of the review committee and help to assure the private colleges and universities that (a) the review process will recognize the inherent differences between public and private institutions of higher learning and (b) representatives from the public sector will not have full control over the practices, policies, and reauthorization of private institutions.

Once again, we appreciate the opportunity to comment informally on the draft rules. This is an opportunity to contribute to the improvement of the rules, which we consider to be important, not only for the interest of private colleges and universities, but to the entire system of higher education throughout the state. Toward that end, we ask that the Commission continue to generously solicit our comments in the development of any policies that affect private colleges and universities.

Finally, West Virginia's private colleges and universities have functioned very well for most of West Virginia's history without excessive oversight or review by the state.. As a former member of the West Virginia House of Delegates once said, "If it ain't broke, don't break it." Once again, we recognize the need to protect student consumers. However, we do not think that the problems being addressed by Series 20 and 52<sup>1</sup> exist in the state's traditional private colleges and universities, and we ask that the Commission exercise constraint in the annual reauthorization process, as described in Series 52.

Thank you again for the opportunity to comment, both formally and informally, on these proposed rules. Please do not hesitate to call upon any of the presidents of the colleges and universities should questions arise with regard to these comments.

Dr. Daniel Anderson  
President, Appalachian Bible College

Dr. Pamela Balch  
President, West Virginia Wesleyan College

Mr. Richard Beyer  
President, Wheeling-Jesuit University

Mr. Richard Creehan  
President, Alderson-Broaddus College

Dr. Scott Miller  
President, Bethany College

Dr. Harold Shank  
President, Ohio Valley University

Dr. Michael Mihalyo  
Chancellor, Davis and Elkins College

Dr. Edwin Welch  
President, University of Charleston

## Kathy Butler

---

**From:** John.PEEK [John.PEEK@glennville.edu]  
**Sent:** Sunday, June 03, 2012 3:27 PM  
**To:** Kathy Butler  
**Cc:** John.PEEK  
**Subject:** Series Suggestions

Kathy,

I have the follow questions and suggests regarding Series 10, Series 20, and Series 52. ☺

### Series 10

Section 5.5 Is it really necessary to submit the “comprehensive institutional self-study” ? Is not the letter of conferral sufficient?

Section 5.6.a. Revise to read “first regularly scheduled post-approval audit or first five-year program review following the effective date of this series.”

Is this the appropriate place to stipulate the requirements for a second degree – A second bachelor’s degree requires the completion of 30 hours beyond the awarding of the first degree.

Is this the appropriate place to note the HLC requirement of 30 of the last 60 hours of bachelor’s degree at the degree granting institution?

Section 5.6.a.3 Next to last line. Change “ot” to “to”

### Series 20

Following Section 3.11.f Add “ in West Virginia” after “local school districts.”

Section 5.3 This appears to be inconsistent with other statements in the document.

Section 8 Hard to follow.

Section 9.2 Should the reference here be to Section 13 or another section?

Section 10.3 Why is there a reference to Section 8?

### Series 52 ☺

Section 2.9 As this statement is vague, it might be a good idea to add at the end of the sentence the following (See Section 4.1)

Section 5.3 Delete this statement as the same purpose is served by Section 5.8 as well as Section 5.9.

Section 5.10.a Should not the HEPC cover the cost of these visits for WV state colleges and universities?

Section 5.10.e Should this section provide for another stage in the process of reauthorization, such as a required improvement plan and/or probationary status?

This seems to be implied in Section 10, but neither section is explicit in this regard.

Section 6 Does the language in Section 2.7 need to be repeated here?

Section 9.4 Does the exemption include late fees?

Section 10.1 Need to clarify the process following the submission of an improvement plan and suspension of a program.

Section 10.2.a Does a SPA conditional or probationary status qualify as a warning? What qualifies as adverse action?

Section 10.2.c Revise, simplify.

I hope these questions and suggestions are of some assistance.

Respectfully,

John M. Peek

## Kathy Butler

---

**From:** Vandalia [vandalia@wvjc.com]  
**Sent:** Tuesday, June 19, 2012 11:32 AM  
**To:** Kathy Butler  
**Cc:** Michael Callen  
**Subject:** Comments to proposed rules  
**Attachments:** Comments Higher Education Commission.pdf

Dear Dr. Butler:

I am writing this email to make comments on proposed rules: 1) Title 133 Series 20 – Initial Authorization of Degree-Granting Institutions and 2) ~~Title 133 Series 52 – Annual Reauthorization of Degree-Granting Institutions~~. Attached are my comments to both rules. I would be happy to discuss/clarify any questions you may have after you have reviewed the enclosures. My office phone number is 304-296-8284.

Sincerely,

Michael K. Callen  
General Counsel  
West Virginia Junior Colleges

Attachment

**Comments to Title 133 Series 52**  
**Annual Reauthorization of Degree-Granting Institutions**

1. Subsection 4.3 – As I understand the intent of the rule, institutions licensed under 18B-2B-9 which do not offer degrees above the associate level would fall under the Council’s jurisdiction and would be exempt from these rules. (The rule itself specifically states that it deals with degree-granting institutions which offer degrees above the associate level. Also, the authorizing statute, West Virginia Code 18B-4-7 specifically refers to the “Council” which oversees institutions offering associate degree and lower level programs.) Therefore, I think subsection 4.3 should be modified to clarify the criteria, and to comply with the statute and the expressed intent of the rule itself.
  - A. The word “specialized” in front of “associate degree” in subsection 4.3.a.1 unnecessarily introduces confusion. The lines between different types of associate degrees tend to be blurry, but the difference between obtaining an associate degree and a bachelor degree is quite clear. Therefore, I suggest dropping the word “specialized”.
  - B. Subsection 4.3.a.2 creates the requirement that institutions “typically do not pursue regional accreditation...”. This is extremely vague. What does “typically” mean? There is one institution license under 18B-2B-9 that did receive regional accreditation years ago, but most if not all the other institutions are nationally accredited. Does the regionally accredited fall within that subsection – and what about all the others? (Also, type of accreditation would seem to be irrelevant.) This introduces unnecessary confusion; therefore, this requirement should be dropped.
  
2. The definitions of a “degree” contained in subsection 3.5 and the definition of “institution” contained in subsection 3.7 are overly broad and could take in a postsecondary institution not offering a degree. A similar problem exists with the language in subsection 2.3. This is beyond the scope of statutory authority since the cited authorization contained in West Virginia Code 18B-4-7(a) grants authority only for setting standards for degrees. Also, the language seems to go beyond the matters that the HEPC wants to address under the rule. (Note: I realize that under subsection 2.9, institutions exempt under Series 20 are exempt under this rule and there are specific exemptions in this rule, but this language is so broad that it tends to be a little confusing or misleading.)
  - A. According to subsection 3.5 any postsecondary course greater than 11 months long would qualify as a “degree”. That definition is far too broad. By no means is an 11.5 month course from a postsecondary institution which offers only a certificate of completion credential (or no credential) qualify as a “degree” by any commonly accepted definition.
  - B. Under subsection 3.7 the rules would encompass (under 3.7.b) a facility that offers “...indicia of a level of educational attainment beyond the secondary level....” There is a category of institutions which offer postsecondary training, but not at the degree level. This language is too broad. Also, under subsection 3.7.c, if an institution “...uses the term college or university or other words of like meaning in its name....” it would be included within this rule. Again, this is too broad. At one time, there was a training

facility in West Virginia called “West Virginia Canine College”. The institution was involved in dog training. Also, there are other types of institutions which sometimes use the word “college” in their name, including cosmetology schools, like an institution in Morgantown that calls itself the “Morgantown Beauty College”. Obviously, the Commission would have no interest or need to regulate that institution.

- C. Under subsection 2.3, entities that use terms such as “college”, “institution”, “university”, or “academy” are also included within the rule. For the reasons stated above, all of these definitions are too broad.
3. Section 133-52-8 requires certain procedures whenever “...ownership or control of an institution changes...” The U.S. Department of Education requires certain procedures to be followed when a change of ownership **resulting in a change of control occurs**. The fact that a change of ownership not resulting in a change of control would not impact the institution is recognized by USDOE in their regulations. I suggest you rewrite the section to use the language paralleling USDOE language which is that the required procedures must be instituted only in the case of the change of ownership “resulting in a change of control”; otherwise, a one percent change in ownership would initiate these procedures. In this regard, how would the regulations deal with publicly traded educational corporations where stock is bought and sold daily.
4. Sections 133-52-10 and 133-52-12
- A. The procedures under these sections create unrealistic timelines. Considering that a failure to comply can result in revocation of state authorization – effectively the death penalty – the procedures and timelines are not realistic.
  - B. Subsection 12.1 requires that upon the receipt of a notice to deny or suspend state authorization, the institution must request a hearing within ten (10) days. If the hearing is requested, it begins within twenty (20) days. There are at least three serious problems with this procedure.
    - 1) There should be no requirement that puts the burden of taking an affirmative action in order to preserve an institution’s fundamental due process when something as serious as closure of the institution is the matter at hand. Requiring notice to preserve appeal rights in a matter that would result in the destruction of the institution is simply wrong. If anything, the regulatory presumption should be that the institution will want to appeal and it should be granted the automatic right to appeal, unless the institution decides to accept the recommendations, after having adequate time to review the report, in lieu of an appeal. Any institution about to shut down would certainly want to have a hearing to present its side.

Also, institutional administrators are not going to be familiar with a little used appeal procedure buried in state regulation. As such, it would be extremely easy for the institution’s administrators not to realize that within ten (10) days they would have to give notice. This requirement should be dropped completely in favor of an automatic right to appeal unless the institution decides to accept the recommendation after having adequate time to review the report. I suggest an absolute minimum of thirty (30) business days should be provided.

- 2) The second problem is the ten (10) day period to request a hearing is wholly inadequate. Matters so serious as to result in the closure of an institution would have to be extensive, serious and would require considerable investigation. Ten (10) days is inadequate on its face, especially considering that it is highly unlikely that an institutional administrator is going to be familiar with a little used procedure buried in state regulation. The procedures in section 12 set up a very unfair trap.
- 3) Finally, to commence a hearing within twenty (20) days creates an unrealistic time frame. In the event of such extreme action as a loss of authorization (which would result in closing the institution) it is highly likely that there are substantial, complex issues. It is simply unrealistic to expect an institution to thoroughly investigate the issues, obtain counsel, and prepare its defense in twenty (20) days.

In considering both the timelines and the requirements to request an appeal, does the Commission think that any of the state's public institutions, if served with such notice, would be aware of the ten (10) day notice, file the request within the required time period, and then be able to investigate and prepare its case within twenty (20) days? In summary, considering the enormous damage that would be done – closure of an institution – these very short time limits and the requirement that an institution has to actually ask for an appeal in order to have the right to appeal are simply not consistent with the American concept of due process or basic procedural fairness.

Subsection 12.1.a needs re-written in its entirety.

- C. Subsection 12.13 requires motions to be made ten (10) days before the hearing. In essence, this means that the institution would have had to obtain counsel and review the entire case, which is probably a complex matter, all within ten (10) days, since the hearing is within twenty (20) days. This is obviously an unrealistic time frame.
  - D. Subsection 12.19 requires that subpoenas be issued at least ten (10) days before the hearing. Once again, it is unrealistic for the reasons previously noted.
5. Subsection 12.1.b states that the chancellor and/or his/her designee shall conduct the hearing. There should an independent, outside, third-party hear the case, such as an administrative law judge. To have the chancellor's office investigate a school and then have the chancellor or his/her designee hear the evidence is the equivalent of a prosecuting attorney's office investigating a criminal case and then the prosecutor or the prosecutor's designee hearing the case.

## Kathy Butler

---

**From:** mkc mkc [mkc@wvjc.com]  
**Sent:** Monday, June 25, 2012 3:20 PM  
**To:** Kathy Butler  
**Subject:** Comments to proposed rules

Dr. Butler:

Thank you for your comments. I did understand that they would not apply to WVJC or any other institution not offering above the associate degree level; however, I decided to review them anyway. I do have a significant concern about the way the exemption language is worded in subsection 4.1.b in Series 20 and subsection 4.3.a in Series 52. As I explained in my comments, I really think that the language "muddies the water" unnecessarily. Also as I noted, language in some of the other subsections which impacts the exemption sections appeared to be unclear. I did mention those subsections in my comments. Besides subsection 4 in each Series, I am particularly concerned about section 6 in Series 20. I had a difficult time putting together subsection 6.4 and 6.7; frankly, I really don't think they carry out the intent as written and I think those subsections need reviewed and revised.

Again, thank you for your prompt response. I hope my comments are of some help; as you know, I am a stakeholder in West Virginia Higher Education and I will do my best to support and advance it whenever I can.

Sincerely,

Mike Callen

**FISCAL NOTE FOR PROPOSED RULES**

Rule Title: Annual Reauthorization of Degree-Granting Institutions

Type of Rule:  Legislative  Interpretive  Procedural

Agency: Higher Education Policy Commission

Address: 1018 Kanawha Blvd. East, Suite 700, Charleston, WV 25301  
Contact: Dr. Paul L. Hill, Chancellor

---

Phone Number: 304-558-0699 Email: chancellor@hepc.wvnet.edu

**Fiscal Note Summary**

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

The annual reauthorization fees will be utilized to offset increased costs for administrative functions related to the review and approval process.

**Fiscal Note Detail**

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

<b>FISCAL YEAR</b>			
<b>Effect of Proposal</b>	<b>Current Increase/Decrease (use "-")</b>	<b>Next Increase/Decrease (use "-")</b>	<b>Fiscal Year (Upon Full Implementation)</b>
<b>1. Estimated Total Cost</b>	0.00	0.00	0.00
Personal Services	0.00	0.00	0.00
Current Expenses	0.00	0.00	0.00
Repairs & Alterations	0.00	0.00	0.00
Assets	0.00	0.00	0.00
Other	0.00	0.00	0.00
<b>2. Estimated Total Revenues</b>	0.00	0.00	0.00

Rule Title: \_\_\_\_\_

Rule Title: Annual Reauthorization of Degree-Granting Institutions

**3. Explanation of above estimates (including long-range effect):**

Please include any increase or decrease in fees in your estimated total revenues.

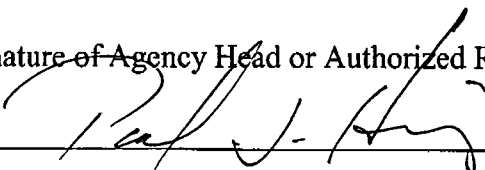
The overall impact will be revenue neutral as the fees collected (approximately \$7,500 a year) will offset additional costs for administrative functions related to the review and approval process.

**MEMORANDUM**

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

Date: August 10, 2012

Signature of Agency Head or Authorized Representative

  
\_\_\_\_\_